



JULIE LASSA

STATE SENATOR

Senate Bill 106 Testimony
Wednesday, April 1, 2009
10:30 AM
330 Southwest
State Capitol

Chairman Jim Sullivan and Committee Members,

Thank you for allowing me the opportunity to provide testimony today about Senate Bill 106. I am reintroducing this legislation at the request of a divorced parent from the 24th Senate District to provide an income tax deduction for amounts contributed by a divorced or legally separated parent to his or her child's EdVest account.

As you may know, EdVest is a state-sponsored program that allows parents, aunts, uncles, grandparents, and great-grandparents to contribute towards a child's college education by placing contributions in a special trust fund. The contributions are then directed into special investment portfolios which are managed by the state. As an incentive, the program offers all of those family members a state tax deduction from taxable state income up to \$3,000 per year, per child for contributions to their EdVest account.

Unfortunately, in order for a parent to be able to deduct an EdVest contribution from his or her income taxes, their child must be listed as a dependent on their tax forms. Divorced parents who are not able to claim their child as a dependent—usually as a result of a custody agreement—are therefore not able to claim the EdVest deduction. Similar problems could occur in situations where parents do not marry.

This bill would simply amend the current statute to allow all otherwise-qualified parents, not just those who are able to claim a child as a dependent for federal taxation purposes, to receive the tax deduction benefit. Presently, the total annual deduction per beneficiary, claimed by a married couple may not exceed \$3,000. Under this bill, the total annual deduction per beneficiary, claimed by divorced or legally separated parents of a child may not exceed \$3,000. This bill will serve to reward all those who make the important decision to invest in a child's future.

The program already offers the state tax deduction for married parents, aunts, uncles, grandparents and great-parents. It is only fair to give the same opportunity to willing divorced parents.

Again, thank you for the opportunity to share my support of Senate Bill 106. I appreciate your time and consideration of this issue.



WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

Senate Bill 106
EdVest Contributions

I. Background:

- A. Several years ago, the State of Wisconsin became one of the first states to pro-actively encourage its families to invest in a loved one's college education by creating the popular **EdVest Program**.
- B. EdVest is a college tuition and expense savings program in which a contributor may purchase "tuition credits" that can be used to pay qualified higher-education costs on behalf of a beneficiary.
 - 1. The "tuition credits" are placed into a special trust fund until the beneficiary is of college-age.
 - 2. In most cases, earnings on the account are both state and federal tax-free until the designated beneficiary is of college-age.
 - 3. Once the beneficiary is of college age, the funds are made available to help pay for educational expenses such as tuition fees and room and board at most two and four year colleges, technical schools, vocational schools and graduate schools.
 - 4. Over **157,000** EdVest accounts have been opened since 1997.
- C. In order to encourage family members to make contributions, the EdVest program has a number of important tax incentives as well (see below).

II. Current Law: Wisconsin Statute § 71.05(6)(b)32:

- A. The purchase of "tuition credits" under the EdVest program is limited to parents, grandparents, aunts, uncles, legal guardians, trusts created on behalf of a beneficiary or individuals purchasing units for their own use.
- B. Annual contributions to EdVest accounts are capped at \$3,000 per year per contributor.

- C. Contributions to EdVest accounts can be deducted from a contributor's Wisconsin taxable income each year if the beneficiary of the account is one of the following:
1. The claimant;
 2. The claimant's child **and** the claimant's dependant who is claimed under section 151(c) of the Internal Revenue Code;
 3. The claimant's grandchild;
 4. The claimant's great-grandchild; or
 5. the claimant's niece or nephew.

III. **Problem:**

- A. Under current law, the definition of the term "dependant" is specifically limited to parents who claim a child as a dependant for federal taxation purposes (see section 151(c) of the Internal Revenue Code, attached). As such, in situations in which a child's parents are unmarried, divorced or legally separated, by federal law only *one* of the parents is able to claim the child as a dependant for taxation purposes. As it relates to the EdVest program, in these situations, even if both parents make separate EdVest contributions, **only the parent who claims the child as a dependant for taxation purposes can claim the contribution as a deduction for taxation purposes.**
- B. As such, current law creates a situation in which divorced, legally separated or unmarried parents are treated less favorably than married parents.
1. **The only consideration under current law is which parent claims the child as a dependant for taxation purposes.**
 - a. Current law ignores important considerations such as which parent provides food, clothing and shelter for a child.
 - b. Further, current law completely ignores court-ordered custody and placement arrangements. In other words, a parent could conceivably have sole legal custody and primary physical placement of a child and *still* be unable to claim the EdVest tax deduction.
 - i. In divorce situations there are a number of tactical considerations that factor into the allocation of

dependant status that should not have a negative effect on college planning.

- C. Current law is even more absurd when one considers the fact that this anomaly does not apply to grandparents, great-grandparents, aunts or uncles. **In other words, a grand parent, great-grandparent, aunt or uncle could claim conceivably the deduction while a parent could not.**
- D. The legislative history of Wis. Stat. § 71.05(6) does not indicate that there was any policy reason for this distinction. Instead, it appears that it was simply an oversight that needs to be corrected.

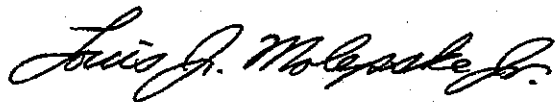
IV. Senate Bill 106

- A. This bill would amend Wis. Stat. § 71.05(6)(b)32 to allow all otherwise-qualified parents, not just those are able to claim a child as a dependant for taxation purposes, to receive the tax deduction benefit available under current law.
- B. **This simple amendment would allow all parents to be treated equally, regardless of whether they are married, unmarried, divorced, or legally separated.**
- C. The State of Wisconsin should do everything in its power to reward those who contribute to the educational expenses of a loved one. This bill will help the State to achieve that laudable goal.
- D. **Concern:** It has been suggested that this piece of legislation could have the unintended consequence of “discriminating” against married couples by creating in situation in which two divorced parents could claim a combined \$6,000 in deductions while a married couple could only claim \$3,000.
 - 1. Under Wis. Stat. § 766.31(2), Wisconsin is a “marital property state,” meaning that all assets and all debts acquired by husband and wife, whether acquired prior to or during a marriage, are presumed to be jointly owned.
 - 2. Due to the fact that marital property law creates the presumption of a joint economic enterprise between husband and wife (see Wis. Stat. § 767.31(4)), the only way to adequately address this concern would be to abolish the marital property system in the State of Wisconsin, which would have a number of far-reaching consequences.

- a. It is current law, not Senate Bill 106, that treats classes of people differently. **Senate Bill 106 corrects that problem to the extent that it is possible.**
 - i. Due to current state law, the reality of the situation is that some disparity will always exist.
 - b. Raising the deduction level for married couples to \$6,000 would simply re-create the very problem that this piece of legislation was designed to solve.
 - c. Further, this scenario is already a possibility as it relates to grandparents, great-grandparents, aunts and uncles.
3. Do not get caught up in details of the marriage issue but rather focus on encouraging Wisconsin residents to invest in a child's education.
 1. Tuition costs are rising approximately **6% annually**.
 2. By 2025, it is estimated that four years at a public college will cost approximately **\$150,000**.
 3. As legislators, we should do everything in our power to help break down barriers to higher education.

Thank you very much for your consideration of this proposal.

Sincerely,



Louis J. Molepske, Jr.
State Representative
71st Assembly District

SB106



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College Savings Program Board

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February 25, 2009

Dear Legislator:

The Wisconsin College Savings Board governs the Wisconsin College Savings Plan, specifically *EdVest*. At the Wisconsin College Savings Board meeting February 17, 2009, the Board unanimously voted to support LRB-1365 and LRB-1474, currently circulating from Senator Lassa and Representative Molepske.

EdVest has developed over the past eleven years into a popular, low-cost way for parents, grandparents, and other family members to save for future college expenses. The Wisconsin College Savings Plan currently has over 244,000 accounts from individuals all across the state and beyond.

The \$3,000 state tax deduction is a very important component of the *EdVest* plan. Currently, it can be utilized by parents, grandparents, great-grandparents, and aunts and uncles. The flexibility of the tax deduction has allowed countless individuals to save for their family's higher education expenses.

Currently, the tax deduction can only be utilized by the custodial parent for their child. If there is a divorce or the parents are legally separated, only one parent can claim the deduction. The College Savings Board feels that this is an unnecessary penalty for parents and that non-custodial parents should have the same rights to the tax deduction as grandparents and aunts and uncles. LRB-1365 and LRB-1474 do not have any foreseeable fiscal impact, as the bills simply allow parents to split the existing tax deduction, not add to it.

We feel it is extremely important to encourage college savings by all parents. We should reward parents for investing in the future of Wisconsin's children.

Please contact the Wisconsin College Savings Plan if you have any questions or comments.

Sincerely,

Senator Alberta Darling
Chair, Wisconsin College Savings Board

Dawn Marie Sass
Wisconsin State Treasurer



tomorrow's scholar[®]
college savings plan



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April 1, 2009

Dear Legislator:

I am writing to express my support of SB106. I firmly believe the passage of this bill will have a positive impact on Wisconsin's College Savings Program.

EdVest has developed over the past eleven years into a popular, low-cost way for parents, grandparents, and other family members to save for future college expenses. The Wisconsin College Savings Plan currently has over 245,000 accounts from individuals all across the state and beyond.

The \$3,000 state tax deduction is a very important component of the *EdVest* plan. Currently, it can be utilized by parents, grandparents, great-grandparents, and aunts and uncles. The flexibility of the tax deduction has allowed countless individuals to save for their family's higher education expenses.

Currently, the tax deduction can only be utilized by the custodial parent for their child. If there is a divorce or the parents are legally separated, only one parent can claim the deduction. I feel that this is an unnecessary penalty for parents and that non-custodial parents should have the same rights to the tax deduction as grandparents and aunts and uncles. SB106 does not have any foreseeable fiscal impact, as the bills simply allow parents to split the existing tax deduction, not add to it.

As I travel the state, I hear from countless constituents who are upset by being unfairly penalized with this small wording glitch in the statutes. Thankfully, we now have SB106 as a means of remedying the situation.

I feel it is extremely important to encourage college savings by all parents. We should reward parents for investing in the future of Wisconsin's children.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Marie Sass".

Dawn Marie Sass
Wisconsin State Treasurer